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ALEXANDER L. STEVAS,
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NO. 80-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ALFRED L. SNAPP & SON, INC., *et al.*,

Petitioners,

v.

COMMONWEALTH OF PUERTO RICO on the relation of CARLO S. QUIROS, SECRETARY, DEPARTMENT OF LABOR AND HUMAN RESOURCES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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February 2, 1981

DI CESARE - Printing — 331-6101 — Washington, D.C. 20006

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Commonwealth of Puerto Rico has *parens patriae* standing to sue Virginia apple growers who allegedly breached the employment contracts of certain Puerto Rican workers.

2. Whether the Commonwealth of Puerto Rico has *parens patriae* standing based upon alleged harm to its general economy where a small number of Puerto Rican citizens were harmed by the Virginia apple growers' alleged breaches of employment contracts, the impact of the alleged breaches of employment contracts upon the general economy of Puerto Rico was relatively slight, and the affected individual Puerto Ricans were in a position to vindicate their own rights and were actually litigating the same issues in other forums.

PARTIES TO THE PROCEEDING BELOW

The respondent before this Court, the Commonwealth of Puerto Rico on the realtion of Carlos S. Quiros, Secretary, Department of Labor and Human Resources, was the plaintiff before the United States District Court for the Western District of Virginia and the appellant before the United States Court of Appeals for the Fourth Circuit.

The petitioners before this Court, who were defendants before the district court and appellees before the court of appeals, are the following apple growers from the Commonwealth of Virginia:

Alfred L. Snapp & Son, Inc.
Alfred L. Snapp, Sr.
John T. Watt & Son, a corporation, d/b/a Timber Ridge Fruit Farm
John T. Watt, Jr.

Orchard Management Co., Inc.
Harry F. Byrd, III
D.K. Russell and Sons, Inc.
J. Robert Russell
Whitman Orchards
Gordon T. Whitman
Robert Boyd, a corporation, t/a Cloverdale Farm
Robert J. Boyd
The C.L. Robinson Corp.
Delmar Robinson, Jr.
R and T Packing Corporation
C. Robert Solenberger
E. Blackburn Moore
Fred L. and Philip B. Glaize, d/b/a/ Crescent Orchards
Fred L. Glaize, Jr.
Philip B. Glaize
Frederick Farms
James R. Robinson
George B. Whitacre
H.R. & T. B. Byrd
John E. Crumpacker
H.F. Byrd
T.B. Byrd
Harvey Brumback
James Clevenger
McDonald Farms
Messick & Beaver
Frank L. Snapp and Elmer G. Snapp, d/b/a/ H.T. Snapp & Son
Frank L. Snapp
Elmer G. Snapp
R. Roland Snapp
Stewart Bell
Harvey Brumback

Woodside Farm
John W. Smith
William S. Franklin
Wayne McInturff
James B. Swing
George Cather
Garland R. Cather
Irvin R. King
Albert W. Messick
C.H. Jones Orchards
Stanley Bauserman
Robert E. Wyatt

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DECISIONS BELOW

On April 19, 1979, the United States District Court for the Western District of Virginia issued its decision granting the petitioner apple growers' motion to dismiss on the ground that respondent Commonwealth of Puerto Rico lacked *parens patriae* standing. That opinion is reported at 469 F. Supp. 928 (W.D. Va. 1979) and appears at Appendix A hereof.

On October 9, 1980, the United States Court of Appeals for the Fourth Circuit handed down its 2-1 decision reversing the district court. That opinion is reported at 632 F.2d 365 (4th Cir. 1980) and appears at Appendix B hereof. On December 16, 1980, the Fourth Circuit denied the petition for rehearing and suggestion for rehearing in banc filed by petitioners. That order appears at Appendix C hereof.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1). The Fourth Circuit entered its judgment on October 9, 1980, issued its order denying the petitioners' timely petition for rehearing on December 16, 1980, and denied petitioners' motion for stay of its mandate pending application to this Court for a writ of certiorari on December 29, 1980.

STATUTES INVOLVED

The statutes involved in this case are the Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1101 *et seq.*, and the Wagner-Peyser Act, 29 U.S.C §§ 49-49k. The administrative regulations principally involved are the Temporary Foreign Labor Certification Process Regulations, 20 C.F.R. Part 655 (1978), and the Wagner-Peyser Act Regulations, 20 C.F.R. Parts 653 and 658 (1978). The pertinent provisions of these statutes and regulations are set forth in Appendix D hereof.

STATEMENT OF THE CASE

This action arises out of the events surrounding the 1978 apple harvest in the Commonwealth of Virginia. During the spring of that year, the petitioners, apple growers in the Commonwealth of Virginia, applied to the U.S. Department of Labor for certification of their

needs for temporary foreign labor, anticipating that, as in other years, they would not be able to recruit sufficient domestic labor to harvest their apple corps.[1]

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[1]The Immigration and Nationality Act, specifically 8 U.S.C. §§ 1101(a)(15)(H)(ii) and 1184(c), provides for the admission into the United States of temporary foreign workers when enough qualified unemployed United States workers are not available. The Commissioner of Immigration and Naturalization has delegated to the U.S. Secretary of Labor the responsibility for determining whether enough qualified American workers are available to fill a particular job and whether the admission of temporary foreign workers will adversely affect United States workers. 8 C.F.R. § 214.2(h)(3) (1978). The U.S. Secretary of Labor has promulgated regulations prescribing the standards under which he will determine whether qualified United States workes are available. 20 C.F.R. Part 655 (1978). One requirement of the Temporary Foreign Labor Certification Regulations is that an employer desiring to bring in temporary foreign workers must first submit a job offer which is circulated through the so-called Interstate Clearance System established pursuant to the Wagner-Peyser Act. 20 C.F.R. §§ 655.201(c) and 655.205 (1978).

The Interstate Clearance System is a national system of public employment offices administered through a bureau known as the United States Employment Service. 29 U.S.C. § 49 *et seq.* The purpose of the system is to provide a no-fee labor exchange, whereby employers located in sections of the country where there are too few workers can be brought together with qualified workers from other areas who are seeking employment. 20 C.F.R. § 653.108 (b)(1) (1978). The U.S. Secretary of Labor has promulaged rules and regulations to carry out the provisions of the Act, pursuant to the authority vested in him by the Act. 29 U.S.C. § 49k; 20 C.F.R. Part 653 (1978). Generally, an agricultural employer desiring to utilize the so-called Interstate Clearance System must submit a job order which meets certain specified minimun requirements. 20 C.F.C. § 653.108(c)(7), (d)(3) (1978). The U.S. Secretary of Labor has also established a complaint system to handle employee complaints alleging an employer's failure to comply with Employment Service Regulations. *See* 20 C.F.R. Part 658 (1978).

Over the years, referral of Puerto Rican workes to East Coast apple growers such as the Virginia apple grower petitioners has been complicated by the existence of a law unique among the states participating in the Interstate Clearance System, namely Puerto Rican Public Law 87, 29 L.P.R.A. § 526 *et seq.*, as amended. P.L. 87 requires any mainland employer seeking to hire Puerto Rican workers to first enter into a contract with the Puerto Rican Secretary of Labor and Human Resources. Failure to do so subjects the grower to possible criminal and civil penalties. Because P.L. 87 imposes terms and conditions of employment more onerous and burdensome than those imposed by the Wagner-Peyser Act and the Immigration and Nationality Act, two separate courts have held that Puerto Rican workers could not be considered "available" within the meaning of the Immigration and Nationality Act as long as the special conditions placed on their employment by P.L. 87 remained in effect. *See Flecha* v. *Quiros,* 567 F.2d 1154 (1st Cir. 1977), *cert. denied,* 436 U.S. 945 (1978), and *Galan* v. *Dunlop,* 411 F. Supp. 268 (D.C.D.C. 1975), *appeals dismissed as moot and remanded with order to vacate sub. nom. Galan* v. *Usery,* Nos. 76-1018 and 76-1019 (D.C. Cir. 1977) (unpublished).

As a result of the First Circuit's decision in *Flecha* v. *Quiros, supra,* the U.S. Department of Labor took the position, when the Virginia apple grower petitioners filed their job orders in the spring of 1978, that the job orders would not be circulated to Puerto Rico. After this Court denied certiorari in *Flecha* v. *Quiros* on June 5, 1978, 436 U.S. 945 (1978), the legislature of Puerto Rico approved an amendment to P.L. 87 in July, 1978 by which the Commonwealth Secretary of Labor and Human Resources was authorized to exempt

prospective employers from P.L. 87 under certain conditions. The U.S. Department of Labor subsequently forwarded the Virginia apple growers' job orders to Puerto Rico on August 2, 1978, less than two weeks before the Virginia apple growers were supposed to be "certified" regarding their need for temporary foreign workers. The hasty, last minute recruitment efforts produced names of approximately 1,000 Puerto Rican workers interested in picking apples in the 1978 East Coast apple harvest.[2] The referral of such a large number of Puerto Rican workers to the 1978 East Coast apple harvest was made possible by a unique U.S. Department of Labor program that provided federal funding to finance the transportation expenses of Puerto Rican workers, an advantage provided to no other U.S. workers either that year or in previous years.[3]

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[2]The Virginia apple growers together with other apple growers and apple grower associations filed suit in the United States District Court for the Western District of Virginia challenging the propriety of the exemption from P.L. 87 and of the referral of Puerto Rican workers. The district court granted the requested preliminary injunction. *Frederick County Fruit Growers Association, Inc., et al.* v. *F. Ray Marshall, et al.*, Civ. No. 78-0086(H) (W.D. Va., filed August 31, 1978), *appeals dismissed as moot and remanded*, 594 F.2d 857 (4th Cir. 1978) (unpublished). On June 16, 1980, the district court dismissed the case on the grounds of mootness. (Unpublished opinion.)

[3]The General Accounting Office examined the U.S. Department of Labor's expenditures of Comprehensive Employment and Traning Act ("CETA") funds to transport Puerto Rican workers to the 1978 Virginia apple harvest. *See* Report by the Comptroller General of the United States to Senator Robert C. Byrd, "Recruiting and Placing Puerto Rican Workers with Growers During the 1978 Apple Harvest Were Unsuccessful," HRD 80-45 (GAO, February 14, 1980). The Comptroller General's report states that $275,000 in CETA funds were spent in 1978, although two-thirds of the Puerto

By all accounts, the experience of the Puerto Ricans referred to the 1978 apple harvest in Virginia was not a happy one. In response, the Commonwealth of Puerto Rico filed a complaint in the United States District Court for the Western District of Virginia on January 11, 1979. The Commonwealth sought by this civil action to declare unlawful certain actions of the Virginia apple grower petitioners with respect to 787 Puerto Rican migrant farm workers referred to the defendant Virginia growers for employment as apple pickers during the 1978 apple harvest.[4]

The complaint named 51 defendants, all engaged in the business of growing apples in the Commonwealth of Virginia.[5] Jurisdiction was asserted on the basis of 28 U.S.C. §§ 1331 and 1337.[6] The complaint alleged that a

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Rican workers failed to meet the eligibility requirements for benefits under the Labor Department's regulations. *Id.* at 2, 4. Regarding the recruiting and referral of Puerto Rican workers, the report states that "the effort was poorly managed and resulted in few acceptable workers being referred to growers." *Id.* at 2. The report concludes that "Labor, State and other local employment security agency, and CETA title III grantee staff, as well as the growers we interviewed, attributed this situation to poor recruitment in Puerto Rico." *Id.* Appendix I, at 18.

[4] Only 420 Puerto Ricans actually arrived at the Virginia orchards, and approximately 30 still had employment three weeks later. Second Amended Complaint ¶ 64. The remainder allegedly never left Puerto Rico "because of oral advice from the United States Department of Labor requesting cancellation of remaining flights." *Id.*

[5] Only 31 employers are actually named in the complaint. The other 20 defendants are either officers, partners or employees of the 31 named apple growers.

[6] Petitioners challenged the jurisdiction of the court. Since the district court dismissed the action on the ground that the Commonwealth lacked standing, it found it unnecessary to rule on the other points raised by petitioners' motion to dismiss.

number of Puerto Rican workers, some named and others unnamed, had accepted the Virginia apple growers' job offers that were circulated through the Interstate Clearance System. The complaint further alleged three categories of violations by the Virginia apple growers. First, the complaint alleged that 18 of the Virginia apple growers failed to provide employment to some of their Puerto Rican workers when they applied for employment. Second Amended Complaint ¶ 72. Secondly, the complaint alleged that 27 of the Virginia apple growers had subjected some of their Puerto Rican workers to work conditions more burdensome than conditions established for temporary foreign workers employed by those growers. *Id.* ¶ 74. Thirdly, the complaint alleged that 27 of the Virginia apple growers improperly terminated some of their Puerto Rican workers before expiration of their contracts. *Id.* ¶ 76.

The Commonwealth requested a declaratory judgment that the Virginia apple growers had breached the terms of their contracts with the Puerto Rican workers and had violated various statutes and regulations. Second Amended Complaint, at pp. 30-31. The Commonwealth also requested the district court to permanently enjoin the Virginia apple grower petitioners from future violations of the Wagner-Peyser Act, the Immigration and Nationality Act of 1952, and implementary regulations promulaged by the U.S. Secretary of Labor pursuant to those Acts with respect to Puerto Rican migrant farm workers. Second Amended Complaint, at p. 31.

On February 15, 1978, the Virginia apple growers filed a motion to dismiss the Commonwealth's complaint on five grounds: (1) the Commonwealth lacked standing to prosecute the action, (2) the Commonwealth was not

the real party in interest within the meaning of Rule 17(a) of the Federal Rules of Civil Procedure, (3) the district court lacked jurisdiction over the subject matter of the suit, (4) the Commonwealth failed to join the affected Puerto Rican migrant farm workers who were indispensable parties for just adjudication of the suit, and (5) the Commonwealth's complaint failed to state a cause of action upon which relief could be granted.

After both parties filed briefs in support of their positions and the district court heard oral argument on the motion to dismiss, the district court on April 19, 1979 entered a memorandum opinion and order dismissing the Commonwealth's complaint with prejudice on the ground that the Commonwealth lacked standing as *parens patriae* to prosecute the action. *Commonwealth of Puerto Rico, Etc.* v. *Alfred L. Snapp & Son, Inc.*, 469 F. Supp. 928 (W.D. Va. 1979). The district court concluded that the allegations in the Commonwealth's complaint failed to present a justiciable quasi-sovereign interest since neither the segment of the Commonwealth's population nor the injury to the Puerto Rican economy was of sufficient magnitude to confer *parens patriae* standing and since the Puerto Rican workers allegedly injured stood ready and willing to vindicate their own rights and were in fact actually litigating the same issues in other forums. The Commonwealth appealed the decision to the United States Court of Appeals for the Fourth Circuit.

On October 9, 1980, the Fourth Circuit handed down its decision reversing Judge Turk and holding that the Commonwealth did have *parens patriae* standing to maintain the action. 632 F.2d 365 (4th Cir. 1980) (2-1 decision; Hall, J., dissenting). The majority opinion agreed that the district court applied the correct legal standards but disagreed with the district court's

conclusions that the affected Puerto Rican workers could effectively litigate the same issues themselves and that neither the segment of the population nor the injury to the Puerto Rican economy was of sufficient magnitude to grant *parens patriae* standing. *Id.* at 369, 370. Judge Hall, the dissenting judge, stated that the district court applied the proper legal standards and "properly considered the number of people affected by the Growers' alleged activities, the potential economic impact, and the ability of the workers to litigate their own claims." *Id.* at 370-371.

At the same time the Commonwealth filed its complaint in this case, it also filed a companion suit in the United States District Court for the Southern District of New York against 55 persons engaged in the business of growing apples in the State of New York. *Commonwealth of Puerto Rico on the relation of Carlos S. Quiros* v. *Bramkamp,* Civil No. 79 Civ. 0199 (S.D.N.Y., filed January 12, 1979). The complaint in the New York case was virtually identical to the complaint in this case, the parties filed equivalent briefs, but no hearing was held. Following the lead of Judge Turk of the Western District of Virginia, Judge Kevin T. Duffy filed a memorandum endorsement granting the New York apple growers' motion to dismiss. The memorandum endorsement stated simply that:

> For the reasons stated in the decision of Judge James Turk in the related case of *Commonwealth of Puerto Rico, etc.* v. *Alfred L. Snapp & Son, Inc., et al.,* 469 F. Supp. 928 (W.D. Va. 1979), the within motion to dismiss this action is granted.

The Commonwealth filed a Notice of Appeal with the Southern District on November 1, 1979, and the case is now pending before the Unied States Court of Appeals for the Second Circuit (Docket No. 79-7777).

REASONS FOR GRANTING THE WRIT

A. The Decision of the Fourth Circuit Conflicts with a Decision of the Southern District of New York Which Is Now on Appeal to the Second Circuit.

At the same time that the instant action was filed in the United States District Court for the Western District of Virginia, the Commonwealth of Puerto Rico filed a substantially similar complaint against certain New York apple growers in the United States District Court for the Southern District of New York. *Commonwealth of Puerto Rico, Etc.* v. *Bramkamp,* Civil No. 79 Civ. 0199 (S.D.N.Y., filed January 11, 1979). Apparently convinced by the reasoning of Judge Turk of the Western District of Virginia, Judge Kevin T. Duffy of the Southern District of New York filed a memorandum endorsement granting the New York apple growers' motion to dismiss on the ground that the Commonwealth lacked standing as *parens patriae*. The memorandum endorsement stated simply that:

> For the reasons stated in the decision of Judge James Turk in the related case of *Commonwealth of Puerto Rico, etc.* v. *Alfred L. Snapp & Son, Inc., et al.,* 469 F. Supp. 928 (W.D. Va. 1979), the within motion to dismiss this action is granted.

The Commonwealth's appeal is pending before the United States Court of Appeals for the Second Circuit.[7]

[7]Briefs have been filed with the Second Circuit, and oral argument has been scheduled for February 4, 1981.

As matters now stands, the decision of the United States Court of Appeals for the Fourth Circuit directly conflicts with the decision of the United States District Court for the Southern District of New York. Obviously, if the United States Court of Appeals for the Second Circuit affirms the Southern District of New York, there will be a conflict between circuit courts on the identical issue.

B. The Decision Of the Fourth Circuit Applies a Test for Parens Patriae Standing that Conflicts With Prior Decisions Of This Court.

The Fourth Circuit agreed that the district court applied the correct legal standards. Instead, the Fourth Circuit reversed the district court because it disagreed with the district court's findings that the affected Puerto Rican workers could effectively litigate the same issues themselves and that neither the segment of the population nor the injury to the Puerto Rican economy was of sufficient magnitude to grant *parens patriae* standing. The Fourth Circuit's decision conflicts with prior decisions of this Court in several respects.

First, the Fourth Circuit's conclusion that the Commonwealth of Puerto Rico has *parens patriae* standing allows the Commonwealth to sue the defendant apple growers for alleged breaches of contracts with their Puerto Rican workers.[8] The Fourth Circuit's decision thus permits the Commonwealth to litigate as a volunteer the personal claims of its citizens,

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[8]The Commonwealth has argued that it seeks only declaratory and injunctive relief and not monetary damages, but the issues and the proof problems would be the same in either case since the Commonwealth's claim would involve the identical facts and circumstances as any individual worker's claim.

even though this Court has declared the "settled doctrine that a State has standing to sue only when its sovereign or quasi-sovereign interests are implicated and it is not merely litigating as a volunteer the personal claims of citizens." *Pennsylvania* v. *New Jersey*, 426 U.S. 660, 665 (1976). *See also Oklahoma ex rel. Johnson* v. *Cook*, 304 U.S. 387 (1938); *Oklahoma* v. *Atchison, T. & S.F.R. Co.*, 220 U.S. 277 (1911); *Kansas* v. *Colorado*, 204 U.S. 331 (1907).

Secondly, the Fourth Circuit acknowledged that a substantial portion of the population must be affected to justify *parens patriae* standing. 632 F.2d at 369, 370. In sharp contrast to the district court, however, the Fourth Circuit concluded that the "number of farm workers temporarily employed annually does not accurately measure the potential effect of the damaged recruitment efforts on all of Puerto Rico's citizens." *Id.* at 370. The Fourth Circuit focused instead on the "almost unmanageable unemployment problem in Puerto Rico." *Id.* The Fourth Circuit's almost cavalier dismissal of the relatively small number of Puerto Rican workers involved in the 1978 Virginia apple harvest[9] conflicts with a number of this Court's previous decisions involving the *parens patriae* doctrine which emphasized the number of the State's citizens who would be affected. *See, e.g., Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923); *Missouri* v. *Illinois*, 180 U.S.

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[9]The Fourth Circuit's opinion does not even mention the number of Puerto Rican workers referred to the Virginia apple growers in 1978 or the number who actually arrived at the orchards. Even if one were to consider all 2,318 Puerto Rican workers referred to all East Coast apple growers in 1978 as being affected by the alleged actions of the Virginia apple growers, that number would still comprise less than one-tenth of one percent (0.1%) of the entire Puerto Rican population.

208 (1901); *Georgia* v. *Pennslyvania Railroad Co.*, 324 U.S. 439 (1945); *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251 (1972). Furthermore, this Court has never looked to conditions in the suing state as justification for *parens patriae standing*. The unemployment problem in Puerto Rico can no more justify *parens patriae* standing in this case than the financial condition of Pennsylvania could have justified *parens patriae* standing in *Pennsylvania* v. *New Jersey*, 426 U.S. 660 (1976). If the unemployment rate in Puerto Rico is the determinative factor of whether a substantial portion of Puerto Rico's citizens are affected, the Commonwealth could claim *parens patriae* standing whenever a solitary Puerto Rican worker has an employment dispute with a mainland employer in which discrimination is alleged. Such a result would render meaningless the generally acknowledged requirement that a substantial proportion of a state's population be affected for *parens patriae* standing to be found.

Thirdly, the Fourth Circuit concluded that "[i]t cannot be said with any assurance that they [*i.e.*, the individual Puerto Rican workers] are in positions to litigate these issues effectively," 632 F.2d at 370, even though many of those workers have already brought suits against many of the same Virginia apple growers[10] and even though

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[10]All the petitioner apple growers were named as defendants in a purported class action filed in the U.S. District Court for the District of Puerto Rico. *Ceferino Lopez Rivas, et al.* v. *F. Ray Marshall, et al.*, Civil No. 78-2175 (D.C.P.R., filed November 9, 1978). A class action suit was filed on behalf of mainland and Puerto Rican migrant workers against New York apple growers and others seeking damages and injunctive relief. *Juan Valderrama Rios, et al.* v. *Secretary of Labor F. Ray Marshall, et al.*, No. 79 Civ. 5711 (S.D.N.Y.,

the U.S. Department of Labor administers an Employment Service Complaint System to explore employee complaints. The Fourth Circuit's view of the

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filed October 22, 1979). A number of the petitioners have been sued in the Puerto Rican courts as a result of the 1978 apple harvest. *See, e.g., William Ocasio, et al.* v. *Irwing King Drilake Farm, Inc.*, Civil No. CS 78-2443 (Guayama Div.); *Obdulia Caban Badillo, et al.* v. *Fred and Philip Glaize*, Civil No. TS 78-3952 (Aguadilla Div.); *Rafael Diaz Medina* v. *Frederick Farms, Inc.*, Civil No. 78-3273 (Humacao Div.); *Gervasio Vazques Solis* v. *Harvey Brumback*, Civil No. 78-3300 (Humacao Div.); *Juan R. Mariana Ortiz* v. *Henry Brumack*, Civil No. CS 78-2441 (Guayama Div.); *Carlos Flores Reys* v. *C.L. Robinson*, Civil No CS 79-100 (Humacao Div.); *Eladio Saez Vellon, et al.* v. *E. Blackburn Moore*, Civil No. 78-3335 (Humacao Div.); *Bienvenida Soto Vega* v. *Orchard Management Co.*, Civil No. 78-3299 (Humacao Div.); *Santiago Lebron, et al.* v. *Orchard Management Co.*, Civil No. 78-2705 (Guayama Div.); *David Cruz Sosa* v. *Wayne Mc. Onturff*, Civil No. 79-1838 (Aguadilla Div.); *Serafin de Jesus Rivera, et al.* v. *McDonalds Farms*, Civil No. 78-1869 (Utuado Div.); *William Del Valle Fonseca, et al.* v. *Messick and Beaver*, Civil No. CS 79-589 (Caguas Div.); *Miguel Laboy Colon* v. *Ray D. Rinker Estate*, Civil No. 79-1895 (Caguas Div.); *Agustin Morales* v. *Garland R. Cather*, Civil No. TS 78-3951 (Aguadilla Div.); *Ramon L. Charles Rosaly* v. *Irwing King Drilake Farm, Inc.*, Civil No. 79-1711 (Guayama Div.); *Julia Surrilo* v. *Irwing King Drilake Farm, Inc.*, Civil No. 78-2435 (Guayama Div.); *Jesus M. Pinto Rodriguez, et al.* v. *Alfred L. Snapp & Son, Inc.*, Civil No. 79-743 (905) (San Juan District); *Moises Alvarez Gonzalez, et al.* v. *Frederick Farms*, Civil No. TS 79-1839 (Aguadilla Div.); *Catalino Lopez Feliciano* v. *Orchard Management Co.*, Civil No. TS 79-1837 (Aguadilla Div.); *Virginia Arroy* v. *Frederick Farms*, Civil No. 80-245 (Arecibo Div.); *Maguelina Vega* v. *Garland R. Cather*, Civ. No. 80-245 (Arecibo Div.); *Daniel Caban Canan & Jose Rodriguez Olan* v. *John T. Watts & Sons*, Civil No. 80-200 (Mayaguez Div.); *Jose R. Garcia Colon, et al.* v. *Messick & Beaver*, Civ. No. CS 80-577 (Aibonito District); *Jose M. Perez Medina* v. *Garland R. Cather*, Civ. No. 80-188 (Aguadilla Div.); *Cruz Cortes Dominicci* v. *James Clevenger*, Civ. No. 80-1396.

ability of private citizens to fend for themselves not only conflicts with the existing evidence but with this Court's previously expressed position that "[p]rivate citizens are not as powerless . . . as the state suggests." *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 265 (1972). Moreover, to allow the Commonwealth to proceed in a *parens patriae* capacity in this action would result in a duplication of litigation involving the same facts and circumstances, with the Commonwealth seeking injunctive relief against a defendant grower in one action and Puerto Rican workers seeking monetary damages and possibly injunctive relief against the same grower in another action, possibly with conflicting results.

C. This Case is One of First Impression for This Court.

While this Court has addressed the doctrine of *parens patriae* standing numerous times, this would be the first case to raise the issue in the context of alleged employment discrimination and contractural violations. Petitioners are aware of no other case which has held that a state has standing as *parens patriae* to rectify alleged employment discrimination against a small number of its citizens in another jurisdiction. The Fourth Circuit's decision, if allowed to stand, would greatly liberalize the test for *parens patriae* standing and open up the federal courts to a whole new class of lawsuit.

CONCLUSION

For the foregoing reasons, petitioners respectfully pray that a writ of certiorari issue to review the decision of the court of appeals.

Respectfully submitted,

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February 2, 1981